



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

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Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

June 22, 2010

To: Supervisor Gloria Molina, Chair
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains a pursuit of a County position related to the Long Beach Courthouse.

Pursuit of County Position on Legislation

Long Beach Courthouse—County-Opposed Possessory Interest Exemption. In an April 13, 2010 Pursuit of Position, the County took a position to oppose the effort by the Administrative Office of the Courts (AOC) to have the Senate and Assembly Budget Subcommittees adopt Budget Trailer Bill to exempt the publically occupied portion of the proposed Long Beach Courthouse from possessory interest property tax. Based on the County's opposition (a copy of the County's opposition letter is attached—the same letter went to the Budget Subcommittees in both Houses), that effort was abandoned.

The AOC is now attempting to pursue regular legislation to accomplish roughly the same objective, but at this time, it is not clear which bill the AOC will seek to amend. Based on the County's current position, this new effort would warrant opposition as well. However, the high priority that the AOC and Judicial Council are placing on this legislation as the means of expediting the construction of the Long Beach Courthouse means that there is a very real possibility that legislation exempting the Long Beach Court from possessory interest property tax could be enacted into law. This would

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potentially place the County in the worst possible position since the proposed law would clearly set a precedent which would encourage similar attempts in the future. However, due to the Offices of Assembly Member Bonnie Lowenthal and Senator Alan Lowenthal, a potential compromise has surfaced. This proposed compromise is based on the recognition that all interested parties, including this Board, want the Long Beach Courthouse to proceed as expeditiously as possible. It also recognizes that the County has legitimate concerns about establishing a precedent for possessory interest exemptions in all future lease-leasebacks and incurring the corresponding revenue losses. Therefore, the County has a choice between maintaining its opposition to the AOC proposed possessory interest exemption and running the risk that it will be enacted into law despite our opposition, or exploring the potential for a compromise that limits the impact of the proposed exemption and ensures that the AOC will not attempt future exemptions within the County.

The first element of the proposed compromise is a letter from the Judicial Council to your Board clearly stating the Long Beach Courthouse project is unique and that no future solicitation by the AOC for lease-leaseback construction projects, or other similar private-entity construction financing mechanisms, in the County will include any representations about the non-taxability of the possessory interests in those projects. Second, the statute which seeks to exempt the portions of the Long Beach Courthouse occupied by the Court and court-related County departments will be an uncodified section of law and not appear in any of the California Codes. Third, the uncodified statute will be drafted very narrowly only to apply to the Long Beach Courthouse and the particular circumstances surrounding the construction of that Court. Finally, this proposed compromise recognizes that the County Assessor is not, in any way, a party to, or in concurrence with, the compromise.

This proposed compromise is likely the only option to minimize the County's future exposure from attempts to skirt possessory interest property tax obligations because the bidding and selection process for the Long Beach Court is near completion. At this stage, it appears to be very difficult, if not impossible, for the AOC to withdraw the representations made in their solicitation about the non-taxability of the possessory interest in the Long Beach Court. Taken together, the elements of the proposed compromise minimize the precedential value of the Long Beach Courthouse project and ensure that the Courts will not attempt similar future efforts in the County. Representatives of the AOC have been informed of the elements of the proposed compromise, and they have indicated that they are willing participate in a joint effort to draft the components of the compromise.

Each Supervisor
June 22, 2010
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Based on existing policies to preserve the County's property tax revenue base and to minimize the adverse impact of State actions, the Chief Executive Office (CEO), in consultation with County Counsel and appropriate County departments, will undertake a joint effort with the AOC to draft the letter and uncoded statute. Once the draft documents are finalized and evaluated, the CEO will communicate to your Board regarding the advisability changing the County's position on Long Beach Court legislation from oppose to neutral.

We will continue to keep you advised.

WTF:RA:sb

Attachment

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants



COUNTY OF LOS ANGELES Sacramento Legislative Office

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WILLIAM T FUJIOKA
Chief Executive Officer

DANIEL J. WALL
Chief Legislative Advocate

May 5, 2010

Board of Supervisors
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The Honorable Mark DeSaulnier
Chair, Subcommittee No. 4, Senate
Committee on Budget and Fiscal Review
State Capitol, Room 2054
Sacramento, California 95814

RE: Court Legislative Proposal—Possessory Interest Tax Language for the Long Beach Court House

Dear Senator DeSaulnier:

The Board of Supervisors of the County of Los Angeles is opposed to the proposed Budget Trailer Bill language (TBL) relating to a possessory interest tax exemption for the Long Beach Courthouse. This TBL is being proposed by the Administrative Office of the Courts (AOC). It should be made clear that the Board is only opposed to the exemption of the private, for-profit entity from the possessory interest tax, and that the Board supports the construction of the new court in Long Beach.

The proposed language constitutes an unconstitutional exemption from property taxation because it asserts that *"Any possessory interest resulting from a lease or other agreement with a non-governmental entity entered into pursuant to this section for the delivery of the new Los Angeles County—Long Beach Courthouse is deemed to be public property for a public purpose and exempt from leasehold, real property, and ad valorem taxation..."* [Language provided by the AOC].

Notwithstanding the assertion to the contrary by the AOC, this proposed legislation does raise a constitutional issue. Section 1 and subdivision (a) of Section 1 of Article XIII of the California Constitution provide that "Unless otherwise provided by this Constitution or the laws of the United States: (a) All property is taxable...". This clear Constitutional mandate is the basis for the taxation of private possessory interests in publicly-owned property which is clarified in § 107 of the California Revenue and Taxation Code (R&TC). Therefore, the proposed bill raises a Constitutional issue.

Further, the AOC proposal for an exemption replicates the circumstances in *City of Desert Hot Springs v. County of Riverside* (91 Cal.App.3rd. 441; 154 Cal.Rptr. 297) where a governmental entity (the City of Desert Hot Springs) entered into a lease-leaseback arrangement with a

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private entity (Goldhammer) for the purpose of financing the construction of a city hall. *Desert Hot Springs* was clear that there was a taxable possessory interest in the city hall held by the private entity. Without specifically examining the lease-leaseback agreement(s) between the AOC and the private firm that will build the Long Beach Court, the conclusion that the Long Beach Court is a taxable possessory interest appears appropriate. If approved, this AOC proposal will further degrade the integrity of the possessory interest component of the property tax system and set a precedent that will invite other interests to pursue similar exemptions.

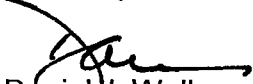
Section 107.8 of the R&TC, provides a statutorily approved mechanism for a governmentally initiated lease-leaseback transaction to avoid being considered a taxable possessory interest. However, the AOC has not chosen to utilize this mechanism. This suggests that the AOC proposal is a taxable possessory interest. In fact, the proposed AOC language actually acknowledges the existence of a possessory interest in this instance. Thus, it seems clear that the AOC language is an impermissible property tax exemption.

Furthermore, documents provided by the AOC further assert that, without the proposed legislation, the State would incur "...an annual property tax liability (\$4 - \$5 million). This statement contradicts Section 3 (a) of Article XIII of the California Constitution which clearly exempts State-owned property from property taxation. It should be noted that a January 4, 2010, document from the AOC indicates that language included in the RFP they issued to solicit contractors for the Long Beach Court explicitly states that the AOC would assume the financial responsibility for any possessory interest taxes that would apply to the newly constructed Courthouse. This self-inflicted harm should not be the basis for legislation that will further erode the legal environment governing the taxation of possessory interests.

Finally, this proposal will result in the County, K-12 schools, community colleges, special districts and the City of Long Beach having to forgo additional revenues at a time when these revenues are critically needed to maintain critical services in the face of a severe economic downturn.

For all of these reasons, I respectfully request that this AOC proposal be rejected. This It is not a matter that should be injected into the State Budget. Complex property tax issues are involved in this ill-advised proposal, and they should properly be before the Revenue and Taxation Committees of the Legislature. Thank you for your consideration.

Sincerely,



Daniel J. Wall
Chief Legislative Advocate

Cc: Each Member and Consultant
Senate Budget Subcommittee #4
Senate Revenue and Taxation Committee